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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.427 of 2006
Date of decision: 2.5.2007

Commissioner of Income tax-III, Ludhiana

...Appellant

Versus

M/s Nahar Spinning Mills Ltd., 373, Indl.Area 'A', Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the appellant.
Mr.Sanjay Bansal, Sr. Advocate with
Mr.Suman Dhiman, Advocate for the respondent.

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RAJESH BINDAL, J.

The revenue has approached this Court by filing the present appeal against order dated 24.10.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A" Chandigarh (for short 'the Tribunal), in MA No.181/Chandi/2005 in ITA No. 539/Chandi/2000, for the assessment year 1996-97, raising the following substantial question of law:-

> "1. Whether, on the facts and circumstances of the case, the Hon'ble ITAT was right in law in directing not to reduce 10% of the interest income from the profit of business for the purpose of computation of deduction under Section 80HHC of the I.T.Act."

Briefly the facts are that the assessee in the present case is engaged in the business of manufacture of cotton, acrylic yarn and textile in hosiery. The return for the assessment year in question was filed on December 2, 1996 declaring its income at Rs. 16,00,37,520/-. The same

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was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short 'the Act') on March 19, 1997 accepting the returned income of the assessee. Thereafter, the case was taken up for scrutiny and proceedings under Section 143(2) of the Act were initiated. The statement of taxable income filed alongwith return revealed that the assessee had shown the interest income amount to Rs. 5,83,19691/- under the head income from other sources. While computing the income under various heads, the income earned from interest was assessed under the head income from other sources and was not considered as part of the income of business and profession. Aggrieved against treating the income from interest under the head income from other sources for the purpose of computation of deduction under Section 80HHC of the Act, the assessee preferred an appeal praying for the addition of this income under the head income of business and profession and for recomputation of deduction. The claim to that extent made by the assessee was rejected by the Commissioner of Income-Tax (Appeals) (for short, the CIT(A)) in appeal for the reasons that same was never made even before the assessing officer.

The assessee approached the Tribunal against the order passed by the C.I.T.(A) raising the following grounds of appeal with regard to his claim for deduction under Section 80HHC of the Act on account of interest income:-

> "1(a) That the ld. CIT(A) (C) erred in law and on facts in rejecting the claim of the appellant that interest income of Rs. 6,37,40,902/- be assessed as business income. And further erred in not increasing business income by Rs. 6,37,40,902/- being amount of interest earned on FDRs for the prupose of computing deduction u/s 80HHC.
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> Directions be given to assess the interest of Rs. 6,37,40,902/- under the head 'business income' and recomputed deduction u/s 80HHC of IT Act.
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> Without prejudice & in alternative, ld. CIT(A) (C) erred in law and on facts in not giving directions that if interest income is assessed under the head ; Other Sources' then interest paid Rs.

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54,21,210/- may be allowed as expenditure to earn interest of Rs. 6,37,40,902/- and resulting thereby business income be enhanced by Rs. 54,21,210/-."

The issue was dealt with by the Tribunal in para 4.5 of the order of the Tribunal in the following terms:-

"4.5 We have considered the submissions of both the parties carefully and gone through the material available on record. This issue had been adjudicated by this Bench of the Tribunal in assessee's own case for assessment year 92-93 vide order dated 23.4.04 and relevant findings had been given at para 7 which read as under:-

> "7. The request of the assessee regarding exclusion of 10% out of interest income and other income was considered by the Tribunal in assessee's own case for assessment year 94-95 in ITA No.1050/Chandi/96 and it has been held that after amendment in Section 80HHC, the interest income to be reduced from the profits and gains of the business is to the extent of 90% of the receipts. In other words, 10% of the interest is not to be excluded from the profits determined by the assessee. It may be pertinent to mention that the issue relating to setting off of interest paid with the interest earned by the assessee has not been accepted by the Tribunal in Assessment Year 94-95 by following the decision of the Hon'ble Jurisdictional High Court in the case of Nani Paliwal V. CIT, 185 CTR 333. We, therefore, find no justification to interfere."

In view of the above, we do not see any merit in this ground of assessee's appeal."

As the assessee found that the error was committed by the Tribunal in dismissing the ground of appeal, it moved an application for rectification, which was accepted by the Tribunal and the concluding para was replaced in following terms by the Tribunal vide order dated October

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24, 2005:-

> "In view of the above, we direct the Assessing Officer to allow the claim by considering the aforesaid order of the Tribunal dated 23.4.04 for the assessment year 92-93 in assessee's own case."

From perusal of the order passed by the Tribunal, it is evident that the assessee did not raise any argument with regard to treating of income from interest, under the head 'Income from Business and Profession' as against the treatment thereof under the head 'Income from Other Sources' at the time of passing of assessment order, which was confirmed by the CIT (A) in appeal. All what he said was that the deduction therefrom should be only to the extent of 90%. In other words 10% of the interest is not to be excluded from the profits. The question as to whether the income on account of interest being not part of the income from business, could still be the assessee can be permitted to retain 10% thereof in the business income for the purpose of calculation under Section 80HHC of the Act was considered by this Court in a separate order passed today in **ITA No.153 of 2004 (Commissioner of Income-Tax (Central), Ludhiana Vs. M/s Nahar Export Ltd., Ludhiana)** and it was held therein as under:-

> "Relevant Clause (baa) of the Explanation to Section 80HHC of the Act, which defines the term profits and gains of business is extracted below:-
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> "(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by--
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> (1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and
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> (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate

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outside India;"

A perusal of the above clause shows that deduction of 90% of the receipts on various accounts including on account of interest is to be reduced, hile computing profits and gains of business for the purpose of deduction under Section 80HHC of the Act, which are included in such profits and not otherwise. As is evident from the facts on record, that the interest income earned by the assessee, which was sought to be claimed by him to be dealt with as income from business or profession, was in fact assessed as income from other sources, which order was upheld in appeal by the CIT(A). Even though, in the ground, the assessee had raised the issue for consideration of the interest income as part of the profits of business but the issue was never argued.

Once the conceded position on record is that the interest income earned by the assessee does not form part of income from business or profession, as computed at the time of assessment, there arises no question of deduction of 90% thereof for the purpose of calculation of deductions under Section 80HHC of the Act. The question of deduction of 90% of the income in terms of the clause (baa) of the Act would arise only if the same forms a part of the income from the business or profession.

Any enabling provision for deduction of a part thereof pre-supposes inclusion of the entire under that head without which the provision cannot be given effect to. The interest income cannot be given two different treatment i.e., while computing the income under various heads at the time of assessment and another by calculating the deduction under Section 80HHC of the Act.

Similar question came up for consideration before this Court in I.T.A. No.73 of 2005 – **Commissioner of Income-tax (Central), Ludhiana v. M/s Avery Cycle Inds.**

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Ltd., Ludhiana, decided on 12.9.2006 wherein the revenue raised the issue that the Tribunal had gone wrong in directing the Assessing Officer to consider the interest income as part of business profit for computing deductions under Section 80HHC of the Act. While considering the issue, this Court found that in fact while framing the assessment in **Avery Cycle Inds. Ltd.'s case, (supra),** the Assessing Officer himself had considered the receipts on account of interest as part of the business income. Under those circumstances, it was held that once the Assessing Officer himself had treated the interest income as part of the income from business, there was no occasion to treat the same differently for the purpose of calculation of deductions under Section 80HHC of the Act. The relevant para from the judgment in **M/s Avery Cycle Inds. Ltd.'s case (supra)** is extracted below:-

> "Once at the time of passing of the assessment order in computing the income from business or profession, the amount of receipt of interest, as mentioned above, has been shown and assessed as income from business or profession, there is no reason for reducing the same out of the income from business or profession for the purpose of calculation of deduction under Section 80HHC of the Act, as after including the same in the income from business or profession, the reduction, as envisaged under that provision, would be carried out. This is clear even from what the Tribunal has directed. Accordingly, we do not find any merit in this contention of the Revenue and hold that once the income is assessed as income from business or profession, the same has to be taken as such for the purpose of calculation of profits of the business in terms of clause (baa) of Section

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80HHC of the Act after reducing therefrom 90% of the amount, so referred in the clause."

In view of our above discussion, we find that the assessee having not raised any issue with regard to treatment of interest income under the head `income from other sources' and the same being not part of the business income, there was no occasion for deduction of 90% thereof. If any income form part of the business income then only the question of deduction of 90% thereof would arise."

For the reasons stated above, the question raised is answered in favour of the revenue and against the assessee and it is held that Tribunal had gone wrong in directing not to reduce 10% of the interest income from the profits and business for the purpose of computation of deduction under Section 80HHC of the Act when the interest income itself was not part of the income from business.

(Rajesh Bindal)
Judge

May 2,2007 **(M.M.Kumar)**
Pka **Judge**

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